

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>NORTHWESTERN SUFFOLK AARP #5053</b>	:	DETERMINATION
	:	DTA NO. 815456
for Redetermination of Exempt Organization Status	:	
under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, Northwestern Suffolk AARP #5053, c/o Abraham Thompson, 23 Fairwind Court, Northport, New York 11768, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on September 10, 1997 at 10:15 A.M., with all briefs to be submitted by December 5, 1997, which date began the six-month period for the issuance of this determination. Petitioner appeared by its president, Abraham Thompson. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

***ISSUE***

Whether the Division of Taxation properly denied the application of petitioner, Northwestern Suffolk AARP #5053, for a sales tax exempt organization certificate.

***FINDINGS OF FACT***

1. Petitioner, Northwestern Suffolk AARP #5053, which was organized in September of 1994, is one of approximately 50 local chapters of the American Association of Retired Persons

(“AARP”) located on Long Island (Nassau and Suffolk counties). Petitioner’s 200 members are part of a national organization which has approximately 34 million members. In 1967, the national AARP obtained a ruling from the Internal Revenue Service “holding you and your subordinate local chapters exempt from Federal income tax as organizations described in section 501(c)(4) of the Internal Revenue Code of 1954.”<sup>1</sup>

2. Petitioner was formally incorporated as a not-for-profit corporation on August 23, 1995. In October or November of 1995, petitioner was officially chartered by the national AARP. Less than a year later, by its president, Abraham Thompson, petitioner filed an application dated August 1, 1996 for a sales tax exempt organization certificate.

3. In a letter dated September 9, 1996, the Division of Taxation (“Division”) initially informed petitioner that:

In general, chapters of the American Association of Retired Persons do not qualify for sales tax exemption because they are not both organized and operated *solely* for one or more of the purposes set forth in the statute (emphasis added).

Nonetheless, the Division advised petitioner that if it wished a further review of its status for sales tax exemption, it should provide certain specified information including several consecutive issues of its monthly newsletter as well as additional information concerning its finances.

4. After conducting a thorough review of the information provided by petitioner, the Division, by a letter dated October 15, 1996, notified petitioner that it did not qualify for sales tax exemption. The Division emphasized that petitioner did not meet the organizational test for exemption “because the stated purposes specified in . . . its Certificate of Incorporation are not

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<sup>1</sup> I.R.C. § 501(c)(4), in relevant part, references the following organizations: “Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.”

exclusively charitable and/or educational.” Further, the Division noted that petitioner did not meet the operational test for exemption because “a substantial portion of its activities are social and recreational.”

5. The third article of petitioner’s certificate of incorporation as a not-for-profit corporation describes the “purposes for which it is to be formed” as follows:

(a) To provide a channel through which members can engage in meaningful community service activities.

(b) To offer members opportunities for self-appraisal and assistance in planning life-styles designed to attain maximum self-realization and enrichment.

(c) To help foster equality of opportunity for older Americans by promoting their continued growth and development, self-respect, self-confidence and usefulness; by encouraging their participation in contemporary life; and by stimulating a dynamic public interest in the aging population and recognition of its potential.

(d) To identify experiences which will further growth and development of personality for retired persons and lead to new, useful and creative roles which enhance life-fulfillment.

(e) To devote the energies of the Chapter to furthering its goals of prolonging and improving the mental and physical well-being of retired persons.

(f) To aid retired persons generally in their social, physical, economic and intellectual needs by acting as a local Chapter for the American Association of Retired Persons, a District of Columbia Non-Profit Corporation (hereinafter “AARP”), in accordance with and in furtherance of its purposes, objectives and ideals, including:

(i) To study and to discuss the meaning of a longer life in a society which offers more and more free time, and to present statistical data for gerontological purposes.

(ii) To identify through educational procedures experiences which will further growth and development of personality and lead to new, useful and creative roles which in turn will provide a sense of life-fulfillment in our changing society.

(iii) To aid the aged in their needs — social, physical, economic, intellectual, provided, however, that such aid will not include the provision of residential facilities for the aged.

(iv) To devote the energies of the Chapter to furthering the educational, scientific and philanthropic objectives of AARP.

6. A review of petitioner’s “AARP chapter treasurer’s report for calendar year 1996”, which is a standard form apparently required by the national organization to be completed by a

chapter organization, such as petitioner, discloses the following money received and spent during 1996:

	<u>Money Received During 1996</u>
Chapter dues received	\$ 1,508.00
Gifts or donations received	-0-
Payments received for tours or bus trips	3,802.00
Amounts received for social events	-0-
Amounts received from items sold	-0-
Interest/Dividend income received	-0-
Program income received	-0-
Advertising income received	1,015.00
Fund Raising	<u>5,282.00</u>
Total	\$17,233.00
	<u>Money Spent During 1996</u>
Amounts paid for meeting expenses	\$ 641.01
Amounts paid for salaries	-0-
Gifts or donations made	1,461.54
Amounts paid for tours or bus trips	3,505.50
Amounts paid for social events	5,075.32
Amounts paid to buy items for resale	-0-
Amounts paid for administrative costs	729.18
Program costs paid	65.00
Amounts paid to print/mail newsletters	965.91
Amounts spent to raise funds	<u>2,062.80</u>
Total	\$14,506.26

7. In the 1996 AARP chapter treasurer's report, petitioner, in section VII of the report, noted that it did not own any real or personal property. Petitioner's president, Abraham

Thompson, testified that petitioner doesn't even own a typewriter, rather, "It is all done by volunteers" (tr., p. 45).

8. Except for the months of July and August, petitioner holds monthly meetings of its members at an auditorium located at the Veterans Administration Hospital in Northport (Suffolk County). One week before each monthly meeting of its general membership, petitioner's board of directors and chairpersons, consisting of approximately 20 individuals, discuss the agenda prepared by petitioner's president for the monthly meeting of its general membership. At the hearing, petitioner was given additional time to submit a copy of its so-called "standing rules" concerning "how directors are appointed and the duties of the officers" (tr., p. 64). However, petitioner did not submit such additional evidence.

9. A review of its May 1997 newsletter shows that petitioner's board of directors consists of eight individuals, including a president, 1<sup>st</sup> vice president, 2<sup>nd</sup> vice president, secretary, treasurer, and assistant treasurer. In addition petitioner has individual chairpersons for the following 14 subcommittees: advertising, audit, community service, consumer affairs, legislation, library, membership, newsletter, nominating, programs, publicity, refreshments, special events, trips & tours.

10. A review of petitioner's 10 monthly newsletters included in the record shows that a substantial part of petitioner's activities relates to social activities including holiday dinners and dances, picnics, trips and tours. After every meeting of the general membership, refreshments are served. The newsletter for February 1996 notes: "After the formal meeting is over please partake of coffee and cake, and socialize with the other members." The September 1996 newsletter suggests:

We should try to spend more time at our social gathering after each meeting. Some suggestions have been made to bring in music and some dancing. At the September 18<sup>th</sup> meeting there will be a line-dancing instructor and time for some ballroom dancing. The dancing will take place after the meeting and during our refreshment time from 9:30 to 11:00 p.m.

In fact, as noted in Finding of Fact “9”, petitioner has subcommittees for refreshments, special events, trips & tours. A trip to Lincoln Center in Manhattan to attend the New York City Opera’s production of *La Boheme*, for example, attracted 40 participants. A poll of 64 members concerning their preferred interests, which is attached to the minutes of a meeting of petitioner’s board of directors on December 8, 1994, shows that (i) “attending theater on Long Island”, (ii) “attending dinner theater on Long Island” and (iii) “attending theater in the city”, “medicare/medicade” [sic], “r.e. taxes”, and “long term care” were the top three preferences, respectively, with the four items note in “iii” tied for the third preference.

11. A review of petitioner’s monthly newsletters and minutes of its board of directors and general membership meetings also discloses that petitioner encourages its members to convey their opinions to legislators, both state and federal, concerning various issues of importance to senior citizens including the following specific matters:

(i) In the January, 1995 newsletter, there is a discussion of “[Clinton’s] new tax cut proposal,” and petitioner’s members are advised to:

Watch this ‘tax cutting’ process carefully. Any tax reduction plan coming out of Washington must include retirees (with no children) who are living on fixed incomes. Let your elected representatives know how you feel about this issue;

(ii) The minutes for the membership meeting of November 15, 1995 note that: Sy Horowitz reported on behalf of the Legislative Comm. That 10,000 calls were made to Congress by AARP members on behalf of the current budget issues. The bill to prohibit lobbying by AARP and other non profit groups has been set aside [sic];

(iii) The minutes for the board of directors meeting on December 14, 1995 note that:

Sy Horowitz [sic] relayed the AARP recommendation that members continue to lobby their representatives to support Medicare and Medicaid [sic] in the continuing Federal budget debate;

(iv) The minutes for the general membership meeting on April 17, 1996 note that:

The Kennedy/Kassenbaum bill S-1028 will provide for mobility of Health Care Benefits [sic]. Jerry Dano requested that members help AARP support this bill by calling 1 800 714 7175;

(v) The minutes for the board of directors meeting on May 9, 1996 note that “Betsy McGrail will urge the membership to write their N.Y State representative in support of the Family Health Care Decisions Act;”

(vi) The minutes for the general membership meeting on May 15, 1996 note that:

Betsy McGrail urged members to write to their State Legislators in support of the Family Health Care Decisions Act. Sample letters and stamped envelopes were distributed to the membership. Gail Chisholm also encouraged support of the current Medicaid Spousal Impoverishment [sic] Protections in Medicaid. Current State budget proposals call for lowering the threshold of sheltered assets and requiring both spouses to accept Medicaid coverage and income limitations, as a condition of covering one spouse.

12. Although, as noted in Finding of Fact “11”, petitioner encourages its members to convey their opinions to legislators, both state and federal, concerning various issues of importance to senior citizens, it is careful not to endorse candidates for political office. A memorandum dated August 25, 1997 from David T. McNally, described as AARP/VOTE Legislative Representative, to individuals described as “AARP and RTA volunteer leaders,” emphasized that:

In your capacity as an AARP volunteer leader, you must be nonpartisan and AARP activities must reflect a nonpartisan image. AARP takes positions on issues based on AARP Board of Directors’ adopted policies, but *not* for or against candidates for elective office or political parties.

This does not preclude participation in the political party of your choice as an *individual*. However, care must be taken when a candidate asks for your personal support so it is not perceived as an AARP endorsement . . . .

If a candidate for any public office (federal, state or local) asks to speak before your chapter, unit, community council or any other AARP group, you must extend in writing an invitation to his or her opponent to appear at the same meeting before the same audience. Every effort should be made to ensure that all candidates for a particular office are given equal time to address the group or answer questions.

As a matter of Association policy, AARP/VOTE coordinates all election activities and welcomes participation from every AARP volunteer and member. Before planning any activity this year with incumbents or candidates, please consult Jerry Dano, AARP/VOTE State Coordinator. (Emphasis in original.)

13. As noted in Finding of Fact “6”, in 1996 petitioner made “gifts or donations” in the amount of \$1,461.54. A review of petitioner’s exhibits also confirms that petitioner made charitable contributions including donations to (i) a community food pantry, (ii) a nutrition program for senior citizens operated by the senior citizens division of the Department of Human Services of the Town of Huntington, (iii) the medical center run by the Department of Veterans Affairs in Northport, (iv) the Alzheimer’s Association, and (v) a volunteer ambulance service.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 1116(a)(4) provides tax exempt status to a corporation for sales and use tax purposes if it is “organized and operated *exclusively*” for an exempt purpose (emphasis added). Among the exempt purposes enumerated in section 1116(a)(4) are “religious”, “charitable”, “scientific” and “educational”. The tax regulations conform to this statutory requirement that a corporation must meet organizational and operational tests to qualify for tax exempt status for sales and use tax purposes (*see*, 20 NYCRR 529.7[c],[d]).

B. The Division correctly denied petitioner’s application for tax exempt status for sales and use tax purposes because it does not meet either the organizational or operational tests. As noted in Finding of Fact “5”, the purposes for which petitioner was formed are not *exclusively*



for charitable and educational purposes. Nor are its operations *exclusively* for charitable and educational purposes.

C. 20 NYCRR 529.7(e)(1)(ii) defines “charitable” as including the following:

Relief of the poor, distressed, or underprivileged, advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency. . . . The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying for exemption . . . so long as it is not an ‘action’ organization of any type described in subdivision (d) of this section.

20 NYCRR 529.7(d)(4) provides as follows:

An organization is not operated exclusively for one or more exempt purposes if it is an action organization as defined in subparagraphs (i), (ii), or (iii) of this paragraph.

(i) An organization is an action organization if, as a substantial part of its activities, it attempts to influence legislation by propaganda<sup>2</sup> or otherwise. For this purpose an organization will be considered as attempting to influence legislation if it contacts or urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation or if it advocates the adoption or rejection of legislation.

(a) The term “legislation” as used in this section includes action by the Congress, by any state legislature, by a local legislative council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

(b) An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

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<sup>2</sup> “Propaganda” is defined in Webster’s Ninth New Collegiate Dictionary 942 [1983] as follows: “the spreading of ideas, information, or rumor for the purpose of helping or injuring an institution, a cause, or a person”. It is observed that there is also a more pejorative definition of “propaganda” in Webster’s (*id.*) as follows: “ideas, facts, or allegations spread deliberately to further one’s cause or to damage an opposing cause; *also*: a public action having such an effect.” (Emphasis in original.)

20 NYCRR 529.7(e)(1)(v) defines “educational” as meaning the following:

The instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. The following are examples of organizations which, if they otherwise meet the requirement of this section, are educational:

Example 1: An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example 2: An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example 3: An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example 4: Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

D. A review of the purposes for which petitioner was organized shows that most of the purposes noted do not conform to the regulatory definition of educational purposes. Petitioner does not provide instruction or training as meant by the regulatory definition, which is clarified by the examples of educational organizations that meet the regulatory definition of “educational”. The closest example to petitioner is “Example 2”, i.e., “[a]n organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs.” Although petitioner offers informational services to its members, it cannot be said that it presents *public* discussion groups because it provides informational services at meetings of its *general membership*. Furthermore, the purposes for which petitioner has been organized, as detailed in Finding of Fact “5”, include purposes at item “b”, i.e., to offer members assistance in

planning life-styles designed to attain maximum enrichment, and at items “d” and “f(ii)”, i.e., to further growth and development of personality, which are more akin to the purposes of a social group rather than a charitable or educational organization.

E. Moreover, the record is clear that petitioner is not operated exclusively for charitable and educational purposes, but rather operates in many ways like a social group for its members. Petitioner maintains subcommittees for (i) refreshments, (ii) special events, (iii) trips & tours, and as noted in Finding of Fact “6”, petitioner receives substantial payments for tours or bus trips. Petitioner’s newsletters, as noted in Finding of Fact “10”, also reflect that it functions, in many respects, like a social group (*see, Matter of Airmont Senior Citizen Club*, Tax Appeals Tribunal, March 6, 1997).

F. Petitioner has argued that it is “no different than a religious group that indulges in social activities for its members” (tr., p. 21). It is important that non-profit groups are treated equally in reviewing their applications for an exempt organization certificate (*see, Matter of Balant*, Tax Appeals Tribunal, April 17, 1991 [wherein the Tribunal noted that similarly situated taxpayers should be treated similarly]). Nonetheless, it is clear that petitioner is not similarly situated to a religious organization, and its analogy to a religious group is without merit. Rather, it is observed that the Division, in general, does not grant exempt organization certificates to chapters of the AARP. The Division’s position is well grounded in its application of the above regulatory definitions of “charitable” and “educational” which are clearly in harmony with the statutory provision at issue (*cf., BMW Pizza Inc. v. Urbach*, 235 AD2d 146, 666 NYS2d 216).

G. Finally, as noted in Finding of Fact “11”, petitioner attempts to influence legislation by spreading ideas and information for the purpose of helping retired persons, and consequently may

be viewed as an “action organization” under the relevant regulation noted above, which also disqualifies it from tax exempt status for sales and use tax purposes.

H. There is no doubt that petitioner contributes to the quality of life in northwestern Suffolk County, and it should be commended for its contributions to its community, including its various charitable contributions. Nevertheless, the Division properly denied petitioner’s application for an exempt organization certificate.

I. The petition of Northwestern Suffolk AARP #5053 is denied, and the Division’s denial of petitioner’s application for sales tax exemption dated October 15, 1996 is sustained.

DATED: Troy, New York  
May 14, 1998

/s/ Frank W. Barrie  
ADMINISTRATIVE LAW JUDGE